

**PHYSICAL THERAPY BOARD OF CALIFORNIA**

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INTERNET <http://www.ptb.ca.gov>**PHYSICAL THERAPY CORPORATION OWNERSHIP BY A LAYPERSON***Can a layperson be a shareholder in a physical therapy corporation?*

The Physical Therapy Board of California (Board) has determined that the offering of physical therapy services by a corporation, which is not organized as a professional corporation is not prohibited by the Physical Therapy Practice Act. This is interpreted to mean that such a nonprofessional corporation may employ or retain licensed physical therapists to provide physical therapy services. Laypersons may own all or part of the shares of such a corporation.

The Physical Therapy Examining Committee (now the Physical Therapy Board of California) at the December 14, 1990 committee meeting adopted this resolution (resolution attached). The Committee's determination does not extend to the formation of partnerships between physical therapists and laypersons or other licensed health care professionals, with the exception of physicians.

It is well settled under California common law that an unlicensed person may not engage in the practice of certain learned professions, including the medical profession. (Pacific Employees Insurance Co. v. Pearle Vision Center, Inc. (1983) 143 Cal. App. 3d419, 191 Cal.Rptr. 762.) Laypersons may not be partners with healing arts licensees in the provision of their licensed services, nor may such persons otherwise have proprietary interest in such practices. The Board believes this holding to be consistent with the case law cited above.

A partner or other person having ownership interest in a professional practice has the right to manage and control the actions of his or her partner or employee. Such a person who is not professionally licensed may not control decisions, which affect the professional discretion of the licensee and adversely affect the care of the patient. A layperson that is a shareholder in a corporation providing physical therapy services also may not manage or control the professional actions or practice decisions of a physical therapist in the employ of such a corporation.

Note: This document is not a declaratory opinion of the Physical Therapy Board California.

Resolved that the Physical Therapy Board of California hereby determines:

1. That the professions covered by the Professional Corporation Act (Corporations Code, Sections 13400-13410) upon its enactment in 1968 were medicine, dentistry and law.
2. That prior to 1968 it had been the interpretation by the governing boards for each of those three professions (Board of Medical Examiners, Board of Dental Examiners, State Bar Board of Governors) that the practice of the profession through a corporation would be a violation of the respective licensing laws.
3. That the bill enacting the Professional Corporation Act in 1968 was sponsored by organizations for the three professions and was sponsored primarily to permit qualification for tax benefits available to a corporate practice under the Internal Revenue Code.
4. That the 1977 revision of the General Corporation Law provided in Section 202 a standard statement of purpose for corporations not intended to be "professional corporations", that standard statement implied (but did not directly prohibit) that the general business corporation would not practice a profession permitted to be incorporated as a professional corporation.
5. That such 1977 revision was based on the pre-1968 interpretation for the three professions as referred to in paragraph 2.
6. That prior to 1968, there had been no occasion to interpret the physical therapy license laws in the context of the practice of the profession through a corporation but if this committee had been requested to provide an interpretation, the interpretation would have been that those licensing laws are for the regulation of the individuals actually providing physical therapy services and are not intended to regulate the business form in which the profession is practiced.
7. That subsequent to 1969 when physical therapy professional corporations were first authorized and prior to 1977 when the General Corporation Law was revised there was no statute specifically prohibiting the practice of the profession of physical therapy through a general (non-professional) corporation. Further, during that same period, the existence of a statutory authorization for a physical therapy professional corporation was no basis to imply a prohibition against the use of a general corporation for the conduct of a physical therapy professional business.
8. That since the interpretation of the licensing laws for the profession of physical therapy as referred to in paragraph 6 is different that the interpretation of licensing laws for the three professions as referred to in paragraph 2, the language of Section 202(b)(1) of the Corporations Code should not be interpreted as a prohibition of the corporate practice of the profession of physical therapy thorough a general business corporation as long as the individuals actually providing the physical therapy services are licensed physical therapist.

Article 9. Physical Therapy Professional Corporations

1399.30. Citation.

These regulations may be cited and referred to as "Physical Therapy Professional Corporation Regulations."

Note: Authority and reference cited: Sections 2615 and 2696, Business and Professions Code; and Section 13410, Corporations Code.

History:

(1.) New Article 9. (Sections 1399.30-1399.41) filed 8-31-77, Register 77, No. 36.

(2.) Amendment filed 8-13-81, Register 81, No. 33. (3.) Amendment filed 6-29-83, Register 83, No. 27.

1399.31. Professional Relationships and Responsibilities Not Affected.

Note: Authority cited: Section 2696, Business and Professions Code.

History:

(1.) Amendment filed 8-13-81, Register 81, No. 33.

(2.) Repealer filed 6-29-83, Register 83, No. 27.

1399.32. Office for Filing.

Note: Authority cited: Section 2696, Business and Professions Code.

History:

(1.) Repealer filed 8-13-81, Register 81, No. 33.

1399.33. Application.

Note: Authority cited: Section 2696, Business and Professions Code.

History:

(1.) Repealer filed 8-13-81, Register 81, No. 33.

1399.34. Approval and Issuance of Certificates.

Note: Authority cited: Section 2696, Business and Professions Code.

History:

(1.) Repealer filed 8-13-81, Register 81, No. 33.

1399.35. Requirements for Professional Corporations.

A professional corporation shall comply with the following provisions:

(a) The corporation is organized and exists pursuant to the general corporation law and is a professional corporation within the meaning of Moscone-Knox Professional Corporations Act (Section 13400 et seq. of the Corporations Code).

(b) Each shareholder, director and officer (except as provided in Section 13403 of the Corporations Code and Section 2694 of the code) holds a valid physical therapist license. A physical therapist may be a shareholder in more than one professional corporation.

(c) Each professional employee of the corporation who will practice physical therapy, whether or not a director, officer or shareholder, holds a valid physical therapist license.

Note: Authority cited: Sections 2615 and 2696, Business and Professions Code. Reference: Sections 2690 and 2694, Business and Professions Code; and Sections 13401, 13403, 13404, 13405, 13406 and 13407, Corporations Code.

History:

(1.) Amendment filed 8-13-81, Register 81, No. 33. (2.) Amendment filed 10-19-83, Register 83, No. 43.

1399.36. Namestyle.

Note: Authority cited: Section 2696, Business and Professions Code.

History:

(1.) Repealer and new section filed 8-2-79, Register 79, No. 31.

(2.) Repealer filed 8-13-81, Register 81, No. 33.

1399.37. Shares: Ownership and Transfer.

(a) Where there are two or more shareholders in a professional corporation and one of the shareholders:

(1) Dies; or

(2) Becomes a disqualified person as defined in Section 13401(d) of the Corporations Code for a period exceeding ninety (90) days, his or her shares shall be sold and transferred to the corporation, its shareholders or other eligible licensed persons on such terms as are agreed upon. Such sale or transfer shall not be later than six (6) months after any such death and not later than ninety (90) days after the date the shareholder becomes a disqualified person. The requirements of this subsection shall be set forth in the professional corporation's articles of incorporation or bylaws.

(b) A corporation and its shareholders may, but need not, agree that shares sold to it by a person who becomes a disqualified person may be resold to such person if and when he or she again becomes an eligible shareholder.

(c) The share certificates of a professional corporation shall contain an appropriate legend setting forth the restrictions of subsection (b), where applicable.

(d) Nothing in these regulations shall be construed to prohibit a professional corporation from owning shares in a nonprofessional corporation.

Note: Authority cited: Section 2696, Business and Professions Code. Reference: Section 2696, Business and Professions Code; and Sections 13401, 13403, 13406 and 13407, Corporations Code.

History:

(1.) Amendment of subsection (f) filed 8-13-81, Register 81, No. 33.

(2.) Amendment filed 6-29-83, Register 83, No. 27.

1399.38. Certificates of Registration: Continuing Validity and Reports.

Note: Authority cited: Section 2696, Business and Professions Code.

History:

(1.) Amendment of subsections (b), (c), and (d) filed 4-16-79, Register 79, No. 16.

(2.) Repealer filed 8-13-81, Register 81, No. 33.

1399.39. Corporate Activities.

(a) A professional corporation may perform any act authorized in its articles of incorporation or bylaws so long as that act is not in conflict with or prohibited by these regulations, the Physical Therapy Practice Act or the regulations adopted pursuant thereto.

(b) A professional corporation may enter into partnership agreements with other physical therapists practicing individually or in a group or with other physical therapy professional corporations.

Note: Authority cited: Section 2696, Business and Professions Code. Reference: Section 2696, Business and Professions Code; and Sections 13403, 13408 and 13410, Corporations Code.

History:

(1.) Amendment of subsection (a) filed 8-13-81, Register 81, No. 33.

1399.40. Trusts.

The restrictions on the ownership of the shares of professional corporations shall apply to both the legal and equitable title to such shares.

Note: Authority cited: Section 2696, Business and Professions Code. Reference: Sections 13406 and 13407, Business and Professions Code.

History:

(1.) Amendment filed 8-13-81, Register 81, No. 33.

1399.41. Effect of Surrendered or Revoked Certificates; Probate.

Note: Authority cited: Section 2696, Business and Professions Code.

History:

(1.) Repealer filed 8-13-81, Register 81, No. 33.